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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT TACOMA

7 GARY TANNER,

8 Plaintiff,

9 v.

10 DEPARTMENT OF CORRECTIONS,  
11 TAMMY NIKULA, MARK SHERWOOD,  
12 JAMES GALLEGOS, SGT PATRICIA  
MCCARTY, CUS DENNIS CHERRY,  
PREA INVESTIGATORS,

Defendants.

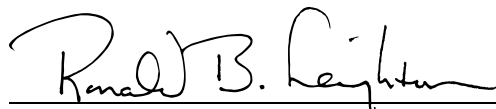
No. C12-5876 RBL/KLS

**ORDER ADOPTING REPORT AND  
RECOMMENDATION**

13 The Court, having reviewed the Report and Recommendation of Magistrate Judge Karen  
14 L. Strombom, objections to the Report and Recommendation, if any, and the remaining record,  
15 does hereby find and **ORDER:**

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17 (1) The Court adopts the Report and Recommendation.  
18 (2) This action is **Dismissed Without Prejudice** prior to service for failure to state a  
19 claim and this dismissal **shall count as a "strike" under 28 U.S.C. § 1915(g).**  
20 (3) The Clerk is directed to send copies of this Order to Plaintiff, counsel for any  
21 Defendants who have appeared, and to the Hon. Karen L. Strombom.

22 **DATED** this 23<sup>rd</sup> day of April, 2013.  
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25 RONALD B. LEIGHTON  
26 UNITED STATES DISTRICT JUDGE